

1 **WO**

2

3

4

5

6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8

9 Sonlight,

No. CV-22-02043-PHX-DWL

10 Plaintiff,

ORDER

11 v.

12 Benjamin Staskiewicz, et al.,

13 Defendants.

14

15 On December 1, 2022, this action was initiated by “Sonlight,” a self-described
16 “common law, non-statutory private trust,” appearing pro se. (Doc. 1 at 4.) On January
17 27, 2023, the action was transferred to the undersigned judge. (Doc. 17.)

18 Sonlight lacks the capacity to sue and is not a proper party to this case. Arizona
19 law governs this issue. Fed. R. Civ. P. 17(b)(3) (capacity to sue, for parties other than
20 individuals or corporations, is determined by the law of the state where the court is
21 located, with exceptions not relevant here); *Irwin Union Collateral Inc. v. Peters &*
22 *Burris, LLC*, 2009 WL 5184902, *3 (D. Ariz. 2009) (“[S]ince the trust is neither an
23 individual nor a corporation, the law governing whether the Sass Trust has the capacity to
24 sue or be sued is governed by Arizona law, the state in which this Court sits.”).

25 In general, a trust “lack[s] the capacity to sue or be sued under Arizona law.”
26 *Irwin Union*, 2009 WL 5184902 at *4; *see also* 76 Am. Jur. 2d Trusts § 601 (“At
27 common law, a trust cannot sue or be sued because it is not a juristic person. In most
28 jurisdictions, a trust is not an entity separate from its trustees, and cannot sue or be sued

1 in its own name, and therefore, the trustee, rather than the trust, is the real party in
 2 interest in litigation involving trust property. Because a trust is not a legal entity, and
 3 does not have capacity, any suits involving the trust must be brought by or against the
 4 trustees.”); *Matter of Book*, 2019 WL 2394259, *2 (Ariz. Ct. App. 2019), *review*
 5 *denied* (2019) (unpublished) (“Generally, a common-law trust is not considered a legal
 6 entity capable of suing or being sued; therefore, any suit involving the trust must be
 7 brought by or against its trustee.”). Thus, a common-law trust cannot sue in its own
 8 name—such a suit must be brought by its trustee.¹ Thus, Sonlight must be dropped as a
 9 party to this lawsuit and can participate only through a trustee. Fed. R. Civ. P. 21.

10 Furthermore, the trustee must be represented by counsel. A nonlawyer cannot
 11 represent herself to the extent that she appears in her capacity as trustee for a trust. *C.E.*
 12 *Pope Equity Tr. v. United States*, 818 F.2d 696, 698 (9th Cir. 1987) (“Rule 17(a)
 13 authorizes a trustee of an express trust to sue on behalf of the trust, without joining
 14 persons ‘for whose benefit the action is brought;’ the rule does not warrant the conclusion
 15 that a nonlawyer can maintain such a suit *in propria persona*. The reciprocal relation
 16 between the bar and the bench permits an exception only for a person acting
 17 personally.”).

18 For these reasons, this case cannot be maintained without competent counsel.
 19 Moreover, the complaint is dismissed because it was filed without counsel. *D-Beam Ltd.*
 20 *P'ship v. Roller Derby Skates, Inc.*, 366 F.3d 972, 973-74 (9th Cir. 2004) (“[M]otions and
 21 pleadings must be filed by counsel.”). The pending motions to dismiss the complaint
 22 (Docs. 8, 13) are therefore denied as moot.

23 By February 28, 2023, retained counsel must file an amended complaint
 24 substituting Sonlight’s trustee as the Plaintiff in this action. If Sonlight’s trustee fails to
 25 adhere to this order through retained counsel, this case will be dismissed without further
 26 notice.

27
 28 ¹ There is an exception to the general rule not applicable here. *See, e.g., McLeod v.*
Deutsche Bank Nat'l Tr. Co., 2017 WL 2189498, *3 (Ariz. Ct. App. 2017) (unpublished).

1 Accordingly,

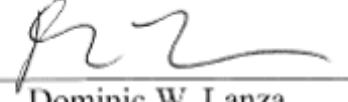
2 **IT IS ORDERED** that the complaint (Doc. 1) is dismissed with leave to amend.

3 **IT IS FURTHER ORDERED** that Sonlight's trustee must retain counsel, and, by
4 February 28, 2023, retained counsel must file an amended complaint substituting
5 Sonlight's trustee as the Plaintiff in this action.

6 **IT IS FURTHER ORDERED** that if an amended complaint is not filed by
7 retained counsel by February 28, 2023, the Clerk of Court shall dismiss this action
8 without further notice.

9 **IT IS FURTHER ORDERED** that the pending motions to dismiss (Docs. 8, 13)
10 are denied as moot.

11 Dated this 31st day of January, 2023.

12
13
14 
15 Dominic W. Lanza
16 United States District Judge

17
18
19
20
21
22
23
24
25
26
27
28